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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 351 OF 2003

1. Pradeepkumar Pranchand Patwa
2. Vishwanath Bundhai Sharma
3. Rama Inchlal Upadhyay
4. Babu alias Iqbal Makbul ... Appellants

V/s

The State of Maharashtra ... Respondent

Mr. Y.M. Choudhari for the appellants.

Mr. V.B.K. Deshmukh, A.P.P. for the respondent State.

CORAM: V.G. PALSHIKAR &
SMT. NISHITA MHATRE, JJ.

DATED: 14TH DECEMBER, 2006.

ORAL JUDGMENT (PER SMT. NISHITA MHATRE, J.):

1. The present appeal has been preferred against the conviction and sentence of the accused under Section 302 read with 34 of the Indian Penal Code. Each of the accused has been sentenced to life imprisonment. They have been convicted for murdering one Rameshsingh Bansi Pardeshi.

2. The prosecution case is that the victim was assaulted fatally by the four accused when he was

relieving himself in an open space. The accused were often found following women to the open plot of land which was used as a public toilet by persons residing in that area. The accused indulged in voyeurism. They had been warned against such behaviour by a political party of which the victim was an active member. The prosecution has also alleged that accused No.3 had stolen an amount of Rs.6,000/- from the victim which was recovered by the victim accused No.3. In retaliation to the warning issued to the accused and the forcible recovery made from him, the accused assaulted the victim and wounded him fatally on 14.5.1999 at about 2.00 pm. A complaint was lodged by the victim's wife with the Ambernath Police Station. The accused were arrested and charged with having murdered Rameshsingh Pardeshi. The case was committed to the sessions for trial. The Additional Sessions Judge, Kalyan convicted the accused and sentenced them as aforesaid.

3. The prosecution has examined 14 witnesses to prove its case against the accused. Seven of these witnesses are panch witnesses. PW Nos. 1, 4, 10 and 13 are eye witnesses and relatives of the deceased. PW-2 and PW-5 are independent witnesses who have witnessed the actual incident. PW-14 is the investigating officer.

4. The learned counsel appearing for the accused has submitted before us that the prosecution witnesses do not name the exact spot of the incident as each of the witnesses places the scene of offence at a different spot. He submits that the identity of the accused is also not established by the evidence on record. According to the learned advocate, the presence of some of the eye witnesses is not spoken about by the other eye witnesses and, therefore, their testimonies cannot be believed. The prosecution has not been able to specify the time of the incident and the lodging of the F.I.R. to its exactitude. The learned advocate has also submitted that the recovery of the weapons allegedly used by the accused to inflict the injuries on the victim is meaningless as the blood stains on the weapons were not identified and no report of the chemical analyzer was placed before the Court. He further points out that the recovery of the clothes of the accused will also have to be discarded as the panch witness who has spoken about the recovery has stated that four shirts and four pairs of trousers were kept on a table at the Ambernath Police Station, which he was informed were the clothes of the accused.

5. We will consider first the evidence regarding the spot of the incident. The evidence on record indicates

that the residents of the area used a "khadan" or a pit for relieving themselves as there was no public toilets in that area. There were two such pits, one was dry while the other was a wet pit. The dry pit was used as a toilet by the residents of the area, while the wet pit was used for washing clothes. All the eye witnesses have stated that the incident occurred in or around a pit. PW-1 who is the victim's wife and the complainant in this case has stated that she saw the victim being assaulted inside the pit which was about 6 ft. deep. The victim was found lying in a ditch next to the pathway in the pit. PW-4 has spoken about the incident having occurred in a pit which has a hilly area behind it. PW-4 is the brother of the victim. He has spoken about having seen the accused running away after beating the victim, onto the hilly area. The victim was lying on the ground injured. From his evidence it is not clear as to whether the victim was lying outside the pit or in the pit. PW-13 has also described the incident which, according to him, took place near the pit. He claims to have seen the incident from his house as it occurred about 25 ft. away from his house. On the other hand, PW-2 has stated that the incident occurred in the wet pit. PW-5, another eye witness has mentioned that, while he was feeding the fish in the wet pit, he heard the victim's cries from the lower level in the

pit. He saw 4 persons assaulting the victim, 3 of them were known to him, i.e. accused Nos. 1, 3 and 4. Therefore, taking the evidence of the eye witnesses into account regarding the scene of offence, and the exact spot where the incident took place, it is unsafe to accept the testimony of these witnesses as they do not corroborate each other regarding the spot where the incident occurred. The witnesses do not support each other as to whether the victim was assaulted in the dry pit or the wet one, leave alone the precise place of assault.

6. The identity of the accused has not been established. PW-1 has stated that PW-13 informed her that somebody was assaulting her husband. She improves upon this statement in the next breath by saying that PW-13 told her that accused Nos. 1 to 4 were assaulting the victim. When she ran towards the open space, she claims to have seen accused Nos. 1 to 4 assaulting the victim with a weapon resembling a sickle and a chopper. PW-2 has also said that she saw the accused pulling the victim and then assaulting him with the weapons in their hands. She claims to have seen that the accused was armed with weapons resembling chopper. However, in her examination-in-chief she has stated that she hid herself while watching the assault about 15-20 feet away from

her. PW-4 claims to have seen the accused running away after beating the victim. He has stated that they were running on the hilly area. According to him, the scene of offence was about 3 or 4 minutes away from his house. The pit behind his house was the one where the incident occurred and the hilly area was behind another pit (presumably the wet pit). PW-5 also claims to have seen the accused and he has named three of them who were known to him i.e. accused Nos.1, 3 and 4. He has spoken about the accused running towards the hilly area when PW-1 arrived at the scene of offence with two boys. PW-13 has spoken about seeing the accused after he heard the cries from the hilly area in front of his house. He claims to have seen accused Nos. 1 to 4 assaulting the victim. They were assaulted with choppers and knives, according to this witness. He claims to have been at the distance of about 5 to 6 ft. away from the accused when the incident occurred. He has identified the accused in the Court hall as well. The identity of the accused also has not been established beyond doubt. While some of the witnesses saw them running away from the pit, others have named the arms with each of them carrying. PW-13 has named the accused Nos. 1, 3 and 4. In such circumstances, in our opinion, the identity of the accused has not been proved beyond doubt. Ultimately, for the identity of the accused to be

established by the prosecution, it would be necessary to consider whether the prosecution has proved its case against them.

7. Each of the eye witnesses have spoken about the presence of certain other people alongwith themselves when the incident occurred. PW-1 has mentioned that, one Raju who is a relative of PW-13 informed her of the assault by the accused on her husband. She claims to have taken her husband to the Central Hospital, Ambernath. She does not mention the presence of any other witnesses at that spot. PW-4 speaks about the presence of PW-1 at the scene of offence. He claims that he and his wife ran with his sister-in-law, PW-1 to the site where the incident occurred after PW-1 was informed of the assault. However, PW-1 does not speak about the presence of PW-4 with her when she ran towards the pit. PW-13 has spoken about going to the house of PW-1 when he heard the cries from the hilly area in front of his house, after seeing the assault on Rameshsingh Pardeshi. This witness has stated that nobody else except he and one Ranbirsingh ran towards the site of the offence when they heard the cries. However, he has stated that, after the accused ran away and he had heard the victim’s cries, many people had gathered at the spot which was about 25 ft. away from

his house. Therefore, even the presence of the eye witnesses at the scene of offence while the victim was being assaulted is not established. While PW-1 has stated that she ran towards the scene of offence alone or rather she has not mentioned the name of any other person who ran with her towards the scene of offence, PW-4 has spoken about the presence of PW-1 as also his wife who has been examined as PW-10 in the present case. However, PW-10 does not say that she ran to the pit. In fact she states that after she heard about the incident, she continued to remain at home. Thus the witnesses do not corroborate each other when speaking of the presence of the other eye witnesses.

8. There is again a great inconsistency in the evidence before the Court as to who informed the police about the incident. PW-1 has stated that she lodged the complaint at about 5.00 pm on 14.5.1999 with the police. PW-4 has spoken about going to the Ambernath police station with the victim in an autorickshaw and then proceeding with him to the Central Hospital, Ulhasnagar. This witness has stated that he narrated the incident to the police when he had gone to the police station with PW-1. He has stated that his sister-in-law accompanied him to the Central Hospital when they took the victim to that hospital. The police arrived there subsequently.

Contrary to this, PW-13 has stated that he narrated the incident to the police when he went to the police station with the victim. According to him, he alighted from the autorickshaw and informed the police about the incident, while PW-1 and PW-4 remained seated in the autorickshaw. Therefore, there is an inconsistency in the evidence of the witnesses, even on the question as to who first informed the police of the incident.

9. PW-1 has spoken about accompanying the victim, initially to the police station, then to the Central Hospital, Ambernath and later to Sion hospital. The incident occurred at 2.00 o'clock in the afternoon, according to her. She claims to have lodged the F.I.R. at 5.00 pm on the same day. Judicial notice can be taken of the fact that, it is impossible for one to travel the distance from Ambernath where the incident occurred to Sion and back again within three hours. Taking into account the time spent at the police station at Ambernath, at the Central Hospital and Sion hospital itself, it would be far fetched to expect the journey to be undertaken in 3 hours. It is also improbable that when the victim was admitted to Sion hospital, his wife would return to Ambernath only to lodge the police complaint. The victim was admitted in Sion hospital in a serious condition. PW-13 has spoken about the

presence of PW-1 with him. He claims to have reached Sion at about 6.00 pm and returned between 2.00 and 3.00 am on the next day i.e. on 15.5.1999. Besides him, PW-4 has also spoken about the presence of PW-1 at the hospital. He claims that the victim was in Central Hospital, Ulhasnagar for about two hours. He has stated that PW-1 proceeded to the police station from the Central Hospital within one hour of their reaching there. He has also stated that they reached the Central Hospital within 15 to 20 minutes of the occurrence of the assault. If what PW-4 has stated is true, then the F.I.R. would not have been lodged at 5.00 pm. The alleged incident occurred at 2.00 pm. Therefore by about 3.00 pm, PW-1 was already at the police station, if the testimony of PW-4 is to be accepted. There is obviously a discrepancy in the time of the incident or the time when the F.I.R. was recorded.

10. As regards recovery of the weapons from the accused, it is the case of the prosecution that all the weapons were recovered at the instance of the accused. Choppers were recovered from accused No.1 and accused No.2, a gupti from accused No.3 and a steel knife from accused No.4. Although the weapons were recovered from the accused, they were not sent to the chemical analyzer. The blood stains, if any, and the finger

prints on these weapons have not been analyzed and thus the recovery of these weapons is meaningless and no reliance can be placed on such a recovery. There is thus no evidence on record that the accused had used the weapons which were recovered to kill the victim.

11. The recovery of the clothes of the accused has been effected according to the prosecution. PW-9, the panch witness has stated that on 15.5.1999, a day after the incident, he was called to the police station where he was shown four pairs of trousers and four shirts lying on the table. He was told by the P.S.I. present that the clothes belong to the accused and was thereafter asked to sign the panchanama. However, this witness has been declared hostile and in the cross-examination, he has stated that it was the clothes of the victim which were shown to him and it was due to a loss of memory that he had stated that the clothes of the accused had been shown to him. This evidence of the panch witness, therefore, cannot be accepted. The recovery of the clothes from the accused has been spoken about by PW-8. They were recovered a week after the incident in a brooklet. The blood stains on the clothes have not been analysed by the chemical analyzer. Therefore, there is no evidence on record to indicate that the stains on those clothes were of the victim’s blood.

12. Considering the totality of the circumstances on which the prosecution has relied and the evidence on record, we find it difficult to the accept the case of the prosecution. When neither the identity of the accused nor the spot of the incident has been established by the prosecution, it is difficult to connect the accused to the crime on the basis of the evidence on record. As already noted, the witnesses have stated that they saw the accused running. It is only PW-13 who has mentioned their names. In fact, PW-4 has stated that he saw the accused when he, his wife and PW-1 were running towards the spot. He has admitted that he saw them side on. PW-2, has stated that she hid behind the pit when she saw the incident occur. The recovery of the weapons and the clothes of the accused does not appear to be genuine.

13. Hence, taking into consideration the facts and circumstances on record, we find that the judgment and order of the Sessions Court, Kalyan is unsustainable. Besides, the prosecution has failed to prove any common intention on the part of the accused to kill the victim. The victim had sustained multiple injuries. However, there is no evidence on record to indicate which injury could be attributed to each of the accused and which

injury proved to be fatal. The doctors who treated the victim at the two hospitals and the one who performed the post-mortem examination have not been examined.

14. The convictions and sentences under Section 302 read with Section 34 of the Indian Penal Code are set aside. Appeals allowed. The accused who are in jail shall be released forthwith, if not otherwise required by the police.

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